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At the Supreme Court
Sitting as the High Court of Justice

H CJ 6685/09
Scheduled for: November 26, 2009

Kahouji and 4 others,
Represented by Counsel Adv. Nirit Hayim et al.
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

Military Commander for the West Bank
Represented by the State attorney's office,
Ministry of Justice, Jerusalem
Tel.: 02-6466289; Fax: 02-6467011

The Respondent

Respondent's Response

1. According to the decision of the Honorable Justice Rubinstein dated August 27, 2009 and the requests for extension, the respondent hereby respectfully submits his response to the petition.
2. This petition concerns petitioners' request that the honorable court orders the respondent to refrain from deporting to the Gaza Strip petitioner 1 (hereinafter – the **petitioner**), who is registered in the Palestinian population registry as a resident of the Gaza Strip, and who was detained on August 19, 2009 while illegally staying in the Judea and Samaria Area (hereinafter – the **Area**).
3. The respondent is of the opinion that the petition should be rejected as there is no cause to interfere with the decision to deport the petitioner, who, as will be specified below, stayed in the Area illegally and abused the permit which had been granted to him for a limited eight day period according to his request.

4. It should be noted, that on August 27, 2009 a notice was filed by the respondent, which stated that despite his position that the petition should be rejected, under the circumstances, and considering the fact that there was no negative security information against the petitioner, the respondent agreed to release the petitioner from custody pending a decision in the petition, subject to the deposit of a 30,000 ILS bail.

Accordingly, the petitioner was released from custody on August 30, 2009, after having deposited bail.

Main Facts Concerning the Matter

5. The petitioner was born in 1982; **petitioner's registered address** in the Palestinian population registry **is in the Gaza Strip** (in the city of Gaza). Petitioner 2, petitioner's wife, and petitioners 3-4, their minor children, are residents of the Area.

From an examination of respondent's computerized system and as stated by the petitioner in his inquiry, petitioner's mother **resides in the Gaza Strip**. An examination of respondent's computerized system indicates, the petitioner has eight siblings who reside in the Gaza Strip.

6. Officials of the Gaza District Coordination Office (DCO) informed that in the beginning of January 2006 the Gaza DCO has received from the Palestinian Civil Affairs Committee an application to approve the passage of the petitioner and several other individuals from the Gaza Strip to the Area for a period of one month, from January 6, 2006 through February 6, 2006. The application noted that the petitioner and the other individuals whose passage was requested were members of a human rights organization, who wanted to go to Ramallah to attend a conference of the members of the organization.
7. An examination of respondent's computerized system indicates that the request to allow petitioner's passage and entry into the Area for the purpose of participating in a conference held by a human rights organization was approved and the petitioner received a permit to enter Israel which was valid from January 8, 2006 through January 15, 2006 and which **explicitly** stated that the petitioner was entitled to travel to the **Area**. Needless to note that the permit provides that "the holder of this permit may enter Israel only to such location and for the purpose for which it was given" (comment 3 on the permit's backside). In this context it should be noted that had the petitioner requested only to enter Israel, the entry permit would have stated that he "was entitled to travel to **Israel**", and such a permit, contrary to the permit he had been holding, would not have entitled him to stay in the Area.

It should be already emphasized that this permit was given to the petitioner for a **specific** purpose, according to the application submitted by the Palestinian Civil Affairs Committee.

A photocopy of the permit which was issued to the petitioner is attached and marked **RS/1**.

8. On January 8, 2006, the petitioner used the permit issued to him, and travelled from the Gaza Strip through Israel, via the Erez Crossing, to the Area.

It should be emphasized, that contrary to petitioners' claim (paragraph 25 of the complementary argument), had the petitioner been trying to travel from the Gaza Strip to the Area not through Israel but rather through Egypt and Jordan, **he would not have been able to enter the Area through the Allenby Bridge without having an appropriate permit.**

9. However, the petitioner did not leave the Area after the expiration of the permit, and rather chose to take the law into his own hands and continued to stay in the Area after the purpose for which the permit was granted, had ended.
10. Needless to note that the respondent informed that **the petitioner did not submit any application to receive a stay permit or a permit to relocate to the Area** over the years he has been illegally living in the Area.
11. On August 19, 2009, after more than three and-a-half years of having illegally lived in the Area, the petitioner was detained by IDF forces near Ramallah.

Since an examination of petitioner's identification card has indicated that his registered address in the Palestinian population registry was in the Gaza Strip, the petitioner went through an inquiry which was conducted in Arabic according to an inquiry form for a Gaza resident illegally staying in the Area and designated to be transferred back to his permanent place of residence. The petitioner declared in the inquiry that he wanted to stay in the Area "because of his work and the good salary".

It should be noted that paragraphs 5-6 of the inquiry form, which are technical paragraphs, have not been filled-out, however, it was informed by the office of the legal advisor to the Area that an operational report of the Civil Administration Operation Room indicated that Civil Administration officials and the office of the legal advisor had examined and presented all relevant data to the deciding official before the decision to deport the petitioner was made.

A photocopy of the inquiry form is attached and marked **RS/3**.

12. On August 20, 2009, petitioner 5, HaMoked: Center for the Defence of the Individual (**HaMoked**) requested the office of the legal advisor to the Area to cancel, and alternatively, to stay the deportation proceedings of the petitioner from the Area to the Gaza Strip. On the same day the office of the legal advisor to the Area sent a reply which stated that the request was denied and that petitioner's illegal stay in the Area for a long period after the expiration of the permit, could not justify his continued stay therein.

Photocopies of the letters are attached and marked **RS/4** and **RS/5** respectively.

13. On August 20, 2009, the petition at hand was filed against petitioner's deportation to the Gaza Strip – his registered residence in the Palestinian population registry, and the decision of the Honorable Justice Rubinstein was rendered which included a temporary order forbidding the petitioner's deportation pending a further decision on the matter and it was held that the petitioner would remain in custody pending a further decision.

As indicated above, on August 27, 2009 a notice was filed by the respondent which stated that despite his position that the petition should be rejected, under the circumstances and considering the fact that there was no negative security information against the petitioner, the respondent agreed to release the petitioner from custody pending a decision in the petition, subject to the deposit of a 30,000 ILS bail. The petitioner was released from custody after having deposited bail.

Respondent's Position

14. The respondent is of the opinion that the petition should be rejected in the absence of cause to interfere with respondent's decision to deport the petitioner to the Gaza Strip, his registered address in the Palestinian population registry.

The relocation to the Area of an individual, who is not registered as an Area resident in the population registry, requires a permit of the military commander. In our case, no application has been submitted by the petitioner to the respondent for a permit to relocate to the Area and hence, no such application has been approved. The only thing granted to the petitioner, **according to an explicit application submitted in his matter**, was **a permit to travel from the Gaza Strip to the Area for a specific purpose and for a definite time period** – a conference of the members of a human rights organization in Ramallah.

After the expiration of the permit (following the expiration date specified therein or subsequent to the conference with respect of which the permit was requested), **the petitioner should have left the Area back to the Gaza Strip**, but, the petitioner chose to continue to stay in the Area illegally, thus, exploiting the permit granted to him. Under these circumstances, in which the petitioner's registered address is in the Gaza Strip and in which **the petitioner has been illegally living in the Area** since the expiration of the permit granted to him, there is no cause to interfere with respondent's decision to deport the petitioner to the Gaza Strip.

Respondent's Position concerning the Relocation of Gaza Residents to the Area

15. In the petition, the petitioners claim that petitioner's address was "mistakenly" registered in the Gaza Strip, and that he has been legally residing in the Area.
16. Respondent's position is that an entry to the Area, and even more so a permanent **relocation** to the Area of an individual who is not registered as a resident of the Area in the population registry, **requires the permit of the military commander**.
17. The respondent's position is premised on the fact that the Judea and Samaria area is a **closed military area**. According to section 90 of the Order regarding Security Provisions (No. 378) 5730-1970 and the Closed Territories Order (the West Bank Area)(No. 34) 5727-1967, a **specific permit** of the military commander is required for the purpose of entering and staying therein. The need to obtain the permit of the military commander applies even more forcefully to a relocation – permanent residence - to the Area.

This honorable court heard over the years many petitions concerning the power of the military commander to prevent entry to and exit from the Judea and Samaria area (and in the past, until the Declaration regarding the End of the Military Rule in the Gaza Strip on September 12, 2005, from the Gaza Strip too).

In its said judgments the honorable court has confirmed the legal validity of the security legislation, and in so doing has referred to the scope of discretion and content of security considerations taken into account by the military commanders in the Area while making their decision concerning the travel of residents out of and into the Area (see for instance HCJ 9293/01 **MK Muhammad Barakeh v. Minister of Defence**, IsrSC 56(2) 509, pages 515-516, and HCJ 709/88 **Rafet Tzubechi Muhammad Teib v. Head of Civil Administration**, TakSC 88(3), 138, page 139, (1988)).

18. The honorable court has more than once approved respondent's position prohibiting the travel of Gaza residents to the Area. See for instance on this matter the judgment in HCJ 7960/04 **Muhammad Mousa Al-Razi v. IDF Gaza Strip Military Commander**, TakSC 2004(3), 3384, which rejected the petition of Gaza residents who applied for a permit to travel to the Area for the purpose of studying there, in which it was held, *inter alia*, as follows:

"The respondent based his decision not to grant the petitioners' request on the security agencies' estimate according to which the petitioners' exit from their region – and especially on that they intend to stay in Bethlehem for the purpose of their studies – embodies risks to national security and to the regions' security. In a written reply on his behalf, the respondent clarified that his position is not based on a specific examination which relates to each and every one of the petitioners personally, **but on the estimation of the security agencies according to which the "risk profile" to which the petitioners belong is sufficient to establish a concern that the terror organizations acting in the Gaza Strip will exploit their exit to Bethlehem for carrying out attacks in Israel and in the Judea and Samaria Region...**

We have come to the conclusion that under the grave circumstances which prevail at this time there is no room to intervene in the respondent's decision. We are prepared to presume that at least some of the petitioners wanted to go to Bethlehem in order to study there, and for no other purpose. However, **we are convinced that by permitting their exit from the Gaza Region there is a material risk to the public's security in Israel and in the regions.**" [emphases added]

And see also the judgment of the honorable court in HCJ 9657/07 **Jarb'ua v. Military Commander of the West Bank**, TakSC 2008(3), 2362 (2008) in which it was held as follows:

"Petitioner 1, who resides in the Gaza Strip, wishes to travel to the Judea and Samaria area, through Israeli territory, in order to visit three of her children who reside in the Judea and Samaria region. The children in question are aged 17, 19, and 23. The authorized body has decided that under the current circumstances the aforesaid passage shall only be permitted in exceptional cases, and that the case of petitioner 1 did not fall under this category. In view of the present security circumstances, especially those which exist in the Gaza Strip, we have not found any fault in the decision not to accede to the application of petitioner 1. The present case is materially different from other cases consisting of exceptional medical circumstances and the like. One must bear in mind, that petitioner 1 has no inherent right to enter Israel for any purpose whatsoever, including passage to the Judea and Samaria area.

Therefore in view of the current circumstances, the petition is dismissed."

19. Individuals who received permit to **enter** the Area and requested to relocate **permanently** to the Area were required to obtain respondent's permit for same and only after such permit was granted, the relocation in fact formulated and the permanent stay in the Area became legal. The respondent had been acting in this manner before the execution the interim agreement in 1995, and has also continued to act in this manner after its execution.

The validity of an entry permit granted to individuals who are not residents of the Area and whose **visit in the Area** was approved by the military commander for this purpose or another, **expires upon the termination of the permit's term, or when the purpose for which the permit was granted is realized**, and when a closure is imposed, at which time the resident holding an entry permit, is required to return to the territory from which he came and his stay in the Area is no longer permitted.

Needless to note that applications for entry and stay permits in the Area are examined in view of the circumstances of the matter and the purpose for which the permit is requested, and when an application is approved and a permit is granted to the applicant, **the permit is intended to enable**

the applicant to realize the purpose for which it was granted during his stay in the Area and is not an unlimited entry and stay permit.

Thus, for instance, an application of a Gaza Strip resident to travel to the Area for studying purposes may be possibly refused, whereas the application of the same person to travel to the Area to receive medical treatment may be approved. It is evident that such a person who travels from the Gaza Strip through Israel to the Area for medical purposes will not be able to stay in the Area after termination of the medical treatments and claim that he was granted with an unlimited stay and relocation permit to the Area

20. Since the outbreak of the security incidents in September 2000, the respondents no longer approve the passage of Palestinians from Gaza to the Area and the relocation to the Area, to the exclusion of exceptional and humanitarian cases.
21. In this context it should be noted that in accordance with the assessment of security officials, terrorist organizations in the Gaza Strip are highly motivated to shift the fighting against Israel to the Area, including, by way of transfer of knowledge, military abilities and explosive experts from the Gaza Strip to the Area to promote and upgrade this activity. In order to promote these purposes, there is a common phenomenon of recruitment of Gaza Strip residents who are staying in the Area and Gaza Strip residents who intend to arrive there, who have accessibility to civilian and military targets in Israel and in the Area, an accessibility which they naturally did not have in the Gaza Strip, and this for the purpose of military activity including suicide attacks, abductions etc.
22. The current policy of the respondents is not to approve the relocation of Palestinians from Gaza to the Area, to the exclusion of exceptional humanitarian cases (which are specified in the "procedure for processing applications of Gaza Strip residents to relocate to the Area" submitted to the honorable court on March 8, 2009 and attached hereto as Exhibit **RS/7**), and according to an orderly application on behalf of the Palestinian Authority, at its senior echelons. This policy properly balances security needs on the one hand, and the need to be considerate in exceptional humanitarian cases, on the other, and is a reasonable and appropriate policy.
23. It should be noted that several petitions are pending before the honorable court (HCJ 660/08, HCJ 2905/08 and HCJ 3911/08 hereinafter – the **relocation petitions**) which concern the relocation of Gaza residents to the Area, an issue which touches on the issue being the subject matter of the petition – the deportation of Gaza Strip residents illegally staying in the Area. The respondent wishes to refer to the response filed on December 2, 2008 in the relocation petitions, which broadly specifies his position concerning the relocation of Gaza residents to the Area.

In the hearing of the relocation petitions held on December 8, 2008 the honorable court held as follows:

"The state representative advised us today that a written procedure is being instituted concerning the manner by which an application to travel from the Gaza Strip to the Judea and Samaria area is to be submitted and concerning the establishment of the criteria for the issuance of the permit itself. The state agrees that the cases being the subject matter of the files at hand will be examined on their merits once an appropriate application is submitted, even before the procedure is instituted.

An updating notice will be filed with us within ninety days. The petitioners are afforded the right to respond within thirty days thereafter. After our review of the notices we shall decide how to proceed to handle these files."

Needless to say that in the hearing of the relocation petitions held on December 8, 2008, the power of the military commander to approve or reject applications of Gaza residents to relocate to the Area was not discussed, as the discussion focused on the manner by which the power is exercised and on the institution of a procedure to regulate the handling of this issue.

On March 8, 2009 an updating notice was filed by the state along with the "procedure for processing applications of Gaza Strip residents to relocate to the Area".

The respondent is of the opinion that there is no need to wait for a decision in the relocation petitions in order to make a decision in this petition. However, since the issues at hand touch on each other the respondent saw fit to provide the honorable court with his position on this matter.

A photocopy of respondents' response in HCJ 660/08 and in HCJ 2905/08 (without exhibits), which broadly specifies respondents' position concerning the relocation to the Area, is attached and marked **RS/6**.

A photocopy of the notice filed with the court on March 8, 2009 is attached and marked **RS/7**.

24. It is hereby emphasized, that this issue of Gaza residents' relocation to the Area, and the interfacing issue – the deportation of Gaza Strip residents illegally staying in the Area, the decision in which issues may broadly affect thousands of Palestinian residents, who, according to estimates of civil administration officials, illegally stay in the Area although their registered residence is Gaza, **are political issues, which are intimately tied to the political relationship between Israel and the Palestinian Authority.**

It is respondents' position that there is no room for the honorable court's interference with these matters which are related to the foreign relations of the State of Israel, the manner of management of which is the prerogative of the Israeli government (with respect to the interference of the honorable court with issues which are clearly political by their nature, see for instance HCJ 4395/00 **The Terror Victims' Headquarters v. the Government of Israel**, TakSC 2000(2), 2243 (2000), also see, *mutatis mutandis*, the judgments of the honorable court in HCJ 2231/03 **Elshalalda v. Commander of the Benjamin Brigade**, and HCJ 5957/02 **Eatedel v. Commander of the Benjamin Region** TakSC 2002(3), 881 (2002) and additional judgments of the honorable court in which it was held that there was no room for interference with Israel's policy concerning the approval of applications for visits and family unification permits in areas being under Israeli military control, since this matter constituted part of the political relationship between Israel and the Palestinian Authority, and that these were political issues).

Deportation of Gaza Residents Illegally Staying in the Area

25. It is respondents' position that the military commander has the authority to order the deportation of illegal aliens from the Area, which is a closed military area.

However, according to current enforcement policy, as a general rule, Gaza Strip residents who relocated to the Area prior to the outbreak of the security incidents in 2000, and against whom no negative security material exists, are not being deported.

26. The honorable court held again in a number of petitions that **there was no room to interfere with respondent's decision to deport to the Gaza Strip Palestinians whose registered address in the population registry was in the Gaza Strip and who were illegally staying in the Area** (see for instance H CJ 10735/03 *Al-Nabahin v. Israel Prison Service*, TakSC, 2003(4), 1227 (2003), H CJ 7880/03 *Ghanim v. Israel Prison Service*, TakSC 2003(3), 2362 (2003)).

It should be noted that these judgments concern petitioners with respect of whom there was information which indicated that their release from prison to the Area might have put public safety at risk. However, these judgments clearly indicate that the military commander has the **authority** to deport to the Gaza Strip a person whose registered address in the Palestinian population registry is in the Gaza Strip and who is illegally staying in the Area.

27. The petitioners reiterate their argument that when the petitioner entered the Area there were no entry and stay permits in the Area and therefore no permit was required beyond the permit to travel through Israel.

However, the fact that until the end of 2007 the military commander has not demanded that Palestinians, residents of Gaza, carried a **document** entitled "**Entry Permit to the Area**" but rather enabled their passage through Israel and entry to and stay in the Area with a **document** entitled "**Entry Permit to Israel**" which stated that its holder was "entitled to travel to the Area", has no relevance. Prior to the issuance of a document entitled "Entry Permit to the Area" the **material requirement** to obtain the permit of the military commander to enter into and stay in the Area had also been in force. If such a material requirement had not been in force, there would not have been any need to apply to the respondent for the purpose of obtaining a permit to travel from the Gaza Strip to the Area. Needless to note that the document issued can not be disconnected from the purpose for which it was requested. In circumstances in which a document entitled "Entry Permit to Israel" was issued to a person according to his request to enter the Area for a specific purpose, the argument that from the moment the document was issued unlimited stay in the Area for any purpose whatsoever was permitted, is unacceptable.

A sample photocopy of a stay permit in the Area is attached and marked **RS/8**.

28. As to the additional cases which were referred to by the petitioners in their complementary argument the respondent wishes to note that these concern Gaza Strip residents who have entered the Area **before 2000**, contrary to the petitioner who entered the Area in 2006. In these instances, since an examination of applicants' cases has indicated that they had entered the Area prior to 2000, it was resolved to allow them to return to the Area. It should be noted that in some of the cases the applicants requested to return to the Area after having visited the Gaza Strip, and that other cases concerned persons who had been deported to the Gaza Strip under different circumstances not in accordance with prevailing policy.
29. As specified above, **the petitioner stayed in the Area illegally for more than three and-a-half years** after the permit, which had been granted to him in 2006, has expired. Contrary to the petition, the petitioner has not received a general and unlimited permit to stay in the Area or a permit to relocate to the Area. The only thing granted to the petitioner in 2006, **according to an explicit application submitted in his matter**, was **a permit to travel from the Gaza Strip to the Area for a specific purpose** – a conference of the members of a human rights organization in Ramallah.

After the expiration of the permit (following the expiration date specified therein or subsequent to the conference with respect of which the permit was requested), **the petitioner should have left the Area back to the Gaza Strip**, but the petitioner chose to continue to stay in the Area illegally, thus, exploiting the permit granted to him.

30. Under these circumstances, the respondent is of the opinion that there is no cause to interfere with the decision to deport the petitioner, who stayed illegally in the Area, to the Gaza Strip, his registered residence in the Palestinian population registry.
31. Therefore, the honorable court is requested to reject the petition and order the petitioners to pay trial costs.

Today, 1 Kislev 5770
November 18, 2009

(signed)
Liora Weiss-Bensky, Adv.
Deputy State Attorney